



### REMARKS

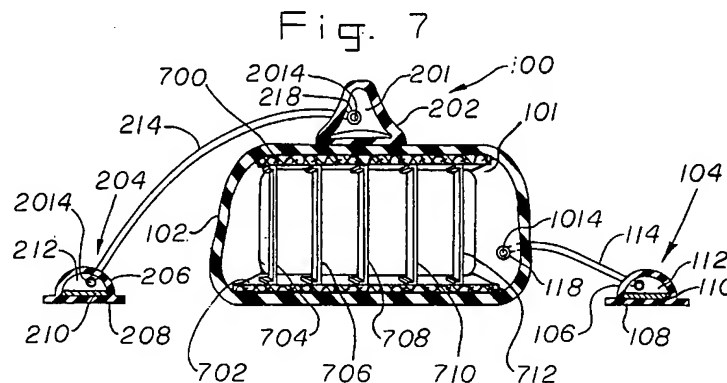
The above-referenced application has been reviewed in light of the Office Action mailed March 8, 2005. By the present amendment, the Applicant has amended claims 1-4 and 7, and has canceled claims 5, 6, 8, and 9. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the prior art. Prompt and favorable consideration of these claims is earnestly sought.

The Office Action rejected claims 8 and 9 under 35 U.S.C. § 112 and asserted that the claims recited subject matter not adequately described in the detailed description. In the interests of expediting the prosecution of the subject application, the Applicant has canceled claims 8 and 9. Therefore, it is respectfully requested that the rejection of claims 8 and 9 be withdrawn.

The Office Action rejected claims 1-4, 6, 8, and 9 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 4,651,717 to Jakubczak (the '717 patent) or, in the alternative, 35 U.S.C. § 103 (a) as obvious over the '717 patent. According to the Office Action, the '717 patent discloses a shaft 214 and an inflatable bladder 201 having a wedge shape when inflated (see Figure 7 reproduced below). In addition, it was asserted that the device of the '717 patent is a retractor since it moves tissue or, alternatively, it would have been obvious that the device of the '717 patent is a retractor since it moves tissue.

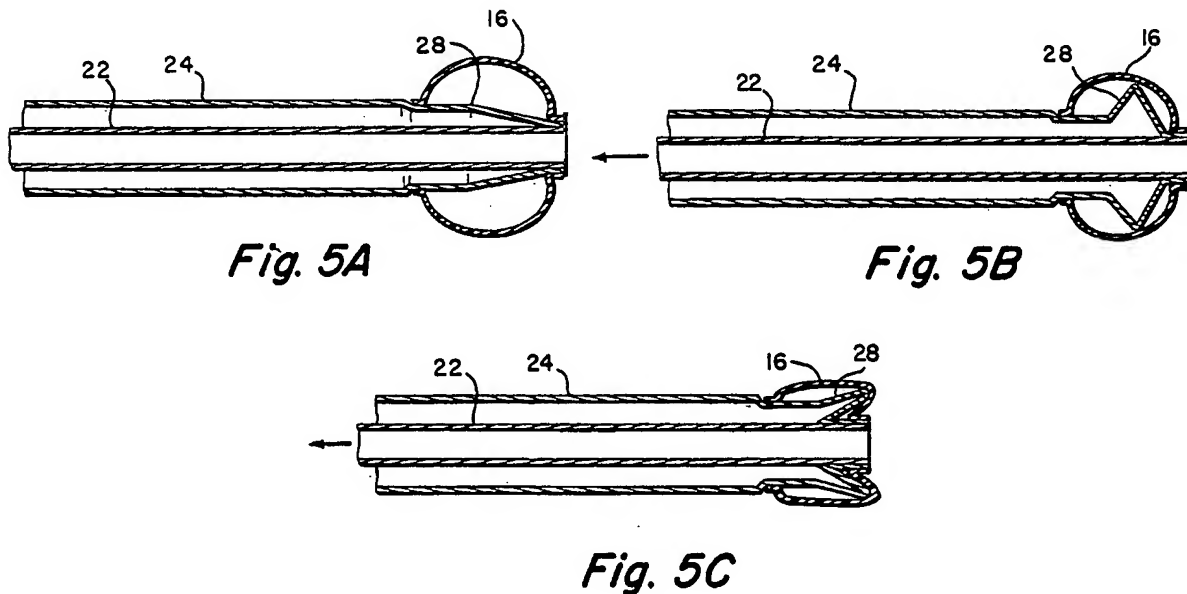
As presently amended, independent claim 1 recites, *inter alia*, a retractor including "a rigid shaft" and "an inflatable bladder having the shape of a wedge upon inflation such that the inflatable bladder separates adjacent portions of bone tissue thereby creating a working space."

The '717 patent relates to a device having one or more inflatable bladders adapted for reconstructive plastic surgery and is adapted to expand soft tissue in preparing a space for an implantable mammary prosthesis. The '717 patent discloses that the device 100 includes an inflatable bladder 202 coupled to a hollow tube 214. The inflatable bladder 202 and the hollow tube 214 are formed from a biocompatible silicone elastomer (see '717 patent Column 4, lines 60-68 and Column 3, lines 47-49, respectively).



The '717 patent does not disclose or suggest a device including, *inter alia*, "a rigid shaft" and "an inflatable bladder having the shape of a wedge upon inflation such that the inflatable bladder separates adjacent portions of bone tissue thereby creating a working space" as recited in amended claim 1. The shaft relied on in the Office Action is formed from a biocompatible silicone elastomer which is a soft, flexible material and is not capable of forming a "rigid shaft" as recited in amended claim 1. Therefore, it is respectfully submitted that amended claim 1 is not anticipated or suggested by the '717 patent and the rejection of the Office Action has been overcome. Claims 2-4 and 7 depend directly or indirectly from amended independent claim 1 and it is respectfully submitted that these claims are also allowable over the '717 patent.

In the Office Action, claims 1 and 3-6 were rejected under 35 U.S.C. § 102 (e) as anticipated by or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over U.S. Patent No. 4,921,478 to Solano et al. (the '478 patent). According to the Office Action, the '478 patent discloses a shaft 22 and an inflatable bladder 16 which has the shape of a wedge when inflated (see Figure 5C reproduced below). It was also asserted that the device of the '478 patent is a retractor since it moves tissue.



As previously discussed, amended independent claim 1 recites, *inter alia*, a retractor including "a rigid shaft having open proximal and distal ends defining a lumen therethrough" and an inflatable bladder "disposed at the distal end and in fluid communication with the lumen, the inflatable bladder having the shape of a wedge upon inflation such that the inflatable bladder separates adjacent portions of bone tissue thereby creating a working space."

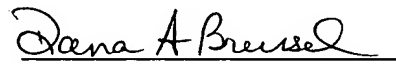
The '478 patent relates to a balloon angioplasty system having two shafts 22, 24, an inflatable balloon 16, and struts 28. According to the '478 patent, the inflatable balloon 16 is attached to the distal end of shaft 24 wherein a plurality of struts 28 are defined along a distal region of shaft 24. When the balloon 16 is inflated, as shown in Figure 5A reproduced above, it forms a generally spherical object and does not have "the shape of a wedge upon inflation" as recited in amended independent claim 1. Rather, the '478 patent discloses that relative movement of the shafts 22 and 24, as shown in Figure 5B reproduced above, results in radial buckling of the struts 28 in an outward direction to contact the inner surface of the balloon 16. Further still, the shape of the balloon 16 relied on in the Office Action, as shown in Figure 5C reproduced above, results from continued relative movement of the shafts 22 and 24, and not "upon inflation" of the inflatable bladder as recited in amended claim 1.

Therefore, the '478 patent does not disclose or suggest a retractor including, *inter alia*, "a rigid shaft" and "an inflatable bladder having the shape of a wedge upon inflation such that the inflatable bladder separates adjacent portions of bone tissue thereby creating a working space" as recited in amended independent claim 1. It is respectfully submitted that amended independent claim 1 is not anticipated or suggested by the '478 patent and the rejection of the Office Action has been overcome. Since claims 2-4 and 7 depend directly or indirectly from amended independent claim 1, it is respectfully submitted that these claims are also allowable over the '478 patent.

Appl. No. 10/743,192  
Amdt. dated May 24, 2005  
Reply to Office Action Mailed March 8, 2005

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 1-4 and 7, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, he is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

  
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